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TAGS: [PHUM](#) [AORC](#) [PREL](#) [CH](#) [NL](#)

SUBJECT: EU/COHOM: WORKING FOR EU SUPPORT FOR US HUMAN RIGHTS GOALS

Classified By: Political Counselor Andrew Schofer for reasons 1.4 (b) and (d).

11. (C) SUMMARY: The United States and EU Troika met October 15 to discuss human rights issues in the context of the semi-annual "COHOM" troika meeting. The EU confirmed that they still value the human rights dialogue process with China and want to coordinate with us on ways to refocus all dialogues to push China beyond its current sour approach. The dialogue with Iran is failing and the situation in the country is bleak. On Iraq, the EU will try to support the elections but without traditional election monitors due to security concerns. We discussed UNGA Third Committee resolutions on Burma, Sudan, and Congo, and a Russian terrorism resolution; however, the EU had several objections to US proposals for a package of agreed language designed to overcome perennial negotiation disputes. On terrorism, the USDel attempted to reassure the EU that the US international supports humanitarian law. There were good discussions of Guantanamo. The EU announced a fledgling program to help EU embassies support human rights defenders. There was a serious exchange of views on the death penalty. Finally, we discussed ways to encourage democratic states to run for seats on the Commission on Human Rights as a way to exclude unsuitable countries. End Summary.

HUMAN RIGHTS WITH CHINA: ALL SOUR, NO SWEET

12. (C) De Klerk discussed the recent EU Dialogue and the EU's review of the entire history of the EU's last 18 dialogues with China. De Klerk, who had led the EUDEL to China recently, reiterated most of the details already reported in other channels.

13. (C) The EU's COHOM delegation has concluded that China's human rights dialogues with the EU are at a crossroads. The EU wants to continue them but an assertive China may become unwilling. The EU sees the glass half full, pointing to the fact that, while many problems remain, China seems to respond to outside pressure in some ways, such as in reform of the Re-education through Labor system, de Klerk noted. The dialogues strengthen the hands of HR defenders inside the country, he observed.

14. (C) On the other hand, USDel recalled serious backsliding, such as when China punishes people who try to take advantage of limited new freedoms. USDel cited whistle blowers, political organizers, and Internet users. "At least there is the Internet," EUDEL countered.

15. (C) The EUDEL recalled a sour atmosphere and confirmed apparent Chinese "dialogue fatigue," but a newcomer to China HR dialogues, Luxembourg's special ambassador for human rights Julien Alex, argued that the "fatigue" was a ploy to erode the dialogue. "With my fresh eyes," he said, he found the Chinese "derogatory, dismissive" and "assertive." He quoted one official as saying, "We are the country of the future; the human rights dialogues are of minor interest to such a country as we." He reported that they sarcastically suggested the EU should just bring a tape recorder from the last meeting since "you always repeat the same thing." He noted that the Chinese revealed they are conducting their own analysis of the EU dialogues, as they did earlier with the U.S., before suspending them. Faced with an opportunity to impress the EU delegation at a critical juncture, the Chinese failed "to go the extra mile," Ambassador de Klerk concluded. Turning the tables on the EU, the Chinese, for the first time in his experience, criticized the EU for "the phenomenon of racism and mistreatment of foreigners in Europe," particularly of Chinese immigrants, he said.

16. (C) USDel O'Sullivan (DRL) agreed that the HR Dialogues are at a critical juncture. The USG hopes to restart them, but no working level discussions have been possible, she said. Amb. Kozak agreed with the EU's observation that "the Chinese feel they do not need to do it with us anymore."

17. (C) COHOM Troika dels considered ways to engage China in substantive HR discussions with concrete results and where "failure would hurt." We agreed to seek ways to collaborate and focus our efforts. USDel proposed engaging the Bern process (of the several countries that have China HR dialogues) to meet more frequently to review options and to coordinate. De Klerk proposed setting limited dialogue

agendas, as well as encouraging more academic and professional meetings such as those now on the margins of the EU dialogues.

18. (C) As for the effect of the HR situation on the China Arms Embargo, de Klerk said the EU delegation put their conclusions to the ministers at the GAERC recently, where it was an "integral" part of considerations on whether to lift or not. The EUDel refused to be drawn on what percentage of the EU's deliberation was comprised of human rights concerns, though hard pressed by USDel to hazard a guess.

#### IRAQ ELECTIONS

19. (C) Dutch HR Ambassador De Klerk and Commission rep Timans said that the security situation would prevent the EU from sending election observers in the proper sense. It remains difficult for the EU to gather valid, current information because of the "considerable risks" involved in being on the ground. Amb. Kozak countered that the number of poll watchers is less important than ensuring that the media coverage is fair and the counting process is correct.

110. (C) Amb. Kozak confirmed that we do not anticipate a postponement of the elections. While we cannot defend every voter everywhere, we would encourage Iraqi voters to work themselves hard themselves to secure the elections. He cited the example of El Salvador where citizens took matters into their own hands at the local level to improve security when elections were threatened by thugs.

#### IRAN DIALOGUE: A FAILURE SO FAR

111. (C) The EU's dialogue with Iran is "bleaker" than that with China, EUDel reported, and it is the poor state of the dialogue that prompted them to co-sponsor Canada's Iran resolution this year. There have been only a handful of positive results since the dialogue started. The EU plans to seek renewed Iranian commitment to the promotion and protection of HR and to explore ways to develop practical means to improve the dialogue, but de Klerk expected the resolution would prompt the Iranians to delay discussions. As in the China dialogue process, the EU is asking what effect, if any, the dialogue process has had or could have on the country discussed, de Klerk said. Commission rep Timans suggested the "jury is still out on whether there is more impact with, or without, the dialogue."

#### THIRD COMMITTEE UNGA RESOLUTIONS: THIRD COUNTRY, THEMATIC, TERRORISM, AND EU/US PACKAGE

112. (C) Dels discussed country specific resolutions on Burma, Sudan, and Congo.

##### a) BURMA RESOLUTION

The EUDel said there is strong support for a focused, political resolution dedicated to a discrete number of issues and not an omnibus resolution, as the previous ones have been. USDel countered that we would run the danger with a shorter resolution of Burma taking it as watered down. Moreover, we felt strongly that the new draft does not capture our concerns. Both dels agreed to make references to Aung San Suu Kyi much more prominent, as well as finding a way to make key political demands more obvious. Action on the resolution would move to New York now, both dels agreed.

##### b) SUDAN RESOLUTION

De Klerk recalled that the EU's "clear message to Sudan" a few days ago was that it faced sanctions lest it cooperate, referring to the visit of the Dutch FM Bot. Considering a UN resolution in the Third Committee, he said that the EU still prefers letting the Africans take the lead, yet there has been no initiative from their side. While USDel recognized the pitfall of a new Sudan resolution in the Third Committee while the UNSC was seized with the matter, EUDel would not accept silence from the Third Committee since it would send the wrong message. The US bottom line for any Third Committee resolution would be for it to be as strong as Security Council resolution text. EUDel shared a draft resolution. The only objections USDel raised on the spot were to ICC and CEDAW references.

##### c) CONGO RESOLUTION

EUDel said that they produced a Congo resolution after the Africans failed to do so. USDel noted that PP 7G already presents a problem, since it mentions the ICC. As with the Sudan resolution, USDel was disappointed that the EU had included such language in the first draft, well knowing it would be unacceptable to us and considering there might have been acceptable alternatives.

##### d) RUSSIAN RESOLUTION ON TERRORISM

The U.S. and EUDel agreed to jointly approach the Russians about holding off on running the resolution, in light of an existing UNSC resolution and the Mexican resolution on the same issue. The EU felt that, after the experience of Beslan, it would be hard to avoid it if Russia insisted. USDel noted that the Russians would at least have the UNSC resolution. Amb. Kozak preferred awaiting the report of the UN High Commissioner for Human Rights prepared with assistance from the independent expert, due in Spring 2005, otherwise the resolution was premature. UNHCHR Justice Arbour may offer an interim report to the Third Committee this fall. DAS Lagon noted Mexico's strong preference to allow its CHR resolution, which provides for the independent expert, to run its course, which is an argument to use with Russia.

#### e) US/EU PACKAGE OF AGREED LANGUAGE

Only at the last minute after lunch could the EU produce its largely status quo reply to the USG's new, broader set of proposed compromise texts for Third Committee resolutions. The package, as discussed last year, moved neither forward nor back. USDel met the EU's objection to our package's "asymmetric focus on EU initiatives" by pointing out that the U.S. proposes few Third Committee resolutions at the behest of allies who fear tainting good ideas with our imprimatur. The EU rejected the US proposal that the package apply to resolutions proposed by individual third countries or EU member states, advising the US to speak directly with the individual sponsors, such as Canada on references to CEDAW. As expected, the EU rejected other initiatives, such as those addressing the Rights of the Child Convention, as being those where the USG would vote against the resolution no matter what the EU might agree to. (Note: DAS Lagon explored the possibility that the USG could sponsor a resolution on discrete children's issues as a way to be creative and avoid problem areas. EUDel had no comment. End note.) EUDel concluded that the package exercise might be better suited to the CHR than the UNGA. DAS Lagon cautioned the EUDel that despite the asymmetry it was in their interest to work to get our support on problem paragraphs, not only to permit US co-sponsorship of EU resolutions but also to avoid divisive and distracting paragraph votes that would otherwise surely come. De Klerk proposed separate discussions among US and EU New York negotiators to try to settle specific issues. (Note: Amb. Kozak asked de Klerk what resolutions the EU wanted the US to introduce. He noted Belarus. Kozak assured de Klerk that the US was seriously considering it, pending the outcome of the October 17 elections there. End Note.)

#### DEATH PENALTY

13. (C) EUDel reiterated EU concerns about the imposition of the death penalty in the United States, focusing on minimum standards to be followed particularly in cases involving juveniles. Amb. Kozak acknowledged the EU's concern, pointing out the issue of the juvenile death penalty is currently before the US Supreme Court. Short of a constitutional amendment, he added, there is little Federal power over the states on this subject. Dutch and Commission interlocutors told Poloffs after the meeting that they appreciated the serious and substantive exchange of views on this sensitive topic for the EU.

14. (C) The EU called attention to continuing problem of failed consular notifications in the U.S. USDel replied that the Federal Government had worked hard to educate State and local police forces and judicial authorities on our international obligations in his regard. Amb. Kozak noted that, considering the size of the U.S., there are only a few problem cases. In particular cases in the US where there has been a failure to notify, USDel noted that the courts have not held this to have affected due process, even if we were in breach of an international obligation, since defendants still had access to lawyers and the courts.

#### RESPECTING HUMAN RIGHTS WHILE FIGHTING TERRORISM

15. (C) In fighting terrorism, we need to maintain full respect for HR, de Klerk warned. He acknowledged that the US and EU disagree only on some details in this balancing effort. Specifically, EUDel called for respect for the whole suite of Geneva Conventions. They dismissed the need for any special categories of combatants vis-a-vis the Geneva Conventions. They raised concern about Guantanamo and Iraqi prisons where the USG holds combatants, and they insisted that all detainees receive due process. Amb. Kozak argued why it was unlikely that Guantanamo methods bled into methods used at Abu Ghraib. Finally, EUDel asked if the USG could be more forthcoming on facilitating "UN mechanisms" looking into questionable circumstances in the prisons.

16. (C) Amb. Kozak reassured the EUDel, which later expressed appreciation for the substantive exchange, that we all support international humanitarian law. "It is a changing picture where we are trying to get it right," he

said, adding, "There is due process going on." The main issue involved Article V tribunals; the US Supreme Court spoke on this issue and now USG actions are controlled as a matter of law by that decision, which the EU should welcome. "Where people have committed abuses against prisoners, there will be punishments," Kozak said. DoD DAS for Detainee Policy Waxman had just briefed the OSCE conference in Warsaw, Kozak added, and he was available to meet UN rapporteurs. However, rapporteurs would not get access to Guantanamo or coalition prisoners in Iraq due to security concerns. ICRC reps have access, he added. Amb. Kozak concluded by informing EUDel that many Guantanamo detainees have been released, while about 200 cannot be released because they are considered dangerous. Of the rest, some have requested asylum for fear of reprisal at home, while others cannot travel because their home countries have rejected them.

#### EU PROPOSAL TO SUPPORT HUMAN RIGHTS DEFENDERS

17. (C) The EUDel announced that the EU would soon task its embassies world wide to implement a new program to encourage support for HR defenders. The program will include a handbook designed to train field officers, who are often more junior colleagues in remote posts. USDel welcomed the effort and asked to be invited as Observer to the EU's conference for this effort, scheduled to be organized before the end of the Dutch Presidency.

#### COMMISSION ON HUMAN RIGHTS: ELECTIONS AND SUPPORT FOR BETTER CANDIDATES

18. (C) The EU does not want the CHR to become a "community of good guys," de Klerk noted, observing a meeting of "angels" would not serve the purpose of the CHR to educate and guide the world community. Kozak said that increasing to 40 over this year's 32 democracies among the CHR's 53 members would improve its work. "We want to avoid the spoilers," he agreed. The Democracy Caucus would be a good forum to promote and encourage nations committed to the CHR's purposes to run for election to it, DAS Lagon said. To encourage smaller, nascent democracies to stand for election, it might be useful to offer their missions administrative or substantive support in Geneva, US and EUDels discussed on the margins.

SOBEL